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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 403047-A-01-US (Orbach)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>02/16/2009</u></p> <p>Signature <u>John C. Moran</u></p> <p>Typed or printed name <u>John C. Moran</u></p>		<p>Application Number 10/810,459</p> <p>Filed 03/27/2004</p> <p>First Named Inventor Julian James Orbach</p> <p>Art Unit 2614</p> <p>Examiner Nguyen, Khai N.</p>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>30,782</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p><u>John C. Moran</u> Signature</p> <p><u>John C. Moran</u> Typed or printed name</p> <p><u>303-450-9926</u> Telephone number</p> <p><u>02/16/2009</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 36 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Serial No. 10/810,459

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**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Patent Application

Inventor Julian Orbach

Atty. Docket No. 403047-A-01-US (Orbach)

Serial No. 10/810,459 Group Art Unit 2614

Filing Date 03/27/2004

Examiner Nguyen, Khai N.

Title Method And Apparatus For Determining The
Presence Of The User By A Telecommunication
Terminal

MS AF
COMMISSIONER FOR PATENTS
Alexandria, VA 22313-1450

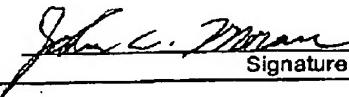
SIR:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant respectfully request that a panel of
Examiners formally review the legal and factual basis of the
rejections in the Final Office Action mailed 11/17/2008,

I hereby certify that this correspondence is being facsimile transmitted to Commissioner for
Patents, at fax No. 571-273-8300 on

02/16/2009
Date Being Faxed


Signature

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related to the above-identified patent application. The instant request is being filed with a Notice of Appeal in compliance with 37 CFR §41.31. Also, the instant request is being filed prior to the filing of an appeal brief.

Applicant respectfully asserts that the above-noted rejections are factually deficient, and requests the application be allowed on the existing claims, or alternatively, that a prosecution on the merits be reopened. If the application is not allowed on the existing claims, then proposed changes which the review panel may have for Applicant which, if accepted, may result in an indication of allowability for the contested claims, would be appreciated.

GROUNDS OF REJECTION TO BE REVIEWED

The grounds of rejection to be reviewed are whether claims 1-5 and 9-12 are unpatentable under 35 U.S.C. §102(e) over U.S. Patent No. 6,542,436 of V. Myllyla (hereafter referred to as Myllyla) and whether claims 13-22 are unpatentable under 35 U.S.C. §103(a) over Myllyla in view of U.S. Patent No. 5,680450 of P.W. Dent, et al. (hereafter referred to as Dent).

ARGUMENT

Rejection of claims 13-17 under 35 U.S.C. §103(a) as being unpatentable over Myllyla in view of Dent

Claim 13 recites an echo canceller for canceling echos caused by acoustic paths to audio information and a

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controller responsive to changes in the echo canceller for determining the presence and non-presence of the user at a telecommunication terminal. Claim 13 is directed to detecting the presence or non-presence of a user based on changes to a echo canceller as the echo canceller performs in a normal manner. Myllyla and Dent singularly or in combination do not disclose this type of operation.

In rejecting claim 13, the Final Office Action on page 6 clearly admits that Myllyla does not determine the proximity of objects using an echo detector; rather, the Final Office Action clearly states that such a detection is performed by utilizing a threshold value as is clearly described in Column 4, lines 11-26, of Myllyla. Figure 4 and corresponding text clearly describe this operation in greater detail. The Final Office Action relies on Dent to teach an echo canceller but does not cite any text in Dent or Myllyla that disclose the detection of the presence or non-presence of a user based on changes in an echo canceller as is clearly recited in claim 13. Rather, the Final Office Action relies on the fact that the DSP of Myllyla could implement an echo canceller and that echo canceller's are inherent in a cellular telephone. Whereas, this statement is true it does not disclose the step recited in claim 13.

Applicant respectfully submits that claim 13, is patentable under 35 U.S.C. §103(a) over Myllyla in view of Dent.

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Dependent claims 14-17 are directly or indirectly dependent on claim 13 and are patentable for at least the same reasons as claim 13.

Rejection of claims 18-22 under 35 U.S.C. §103(a) as unpatentable over Myllyla in view of Dent

Applicant respectfully submits that claims 18-22 are patentable under 35 U.S.C. §103(a) over Myllyla in view of Dent for the same reasons as claims 13-17.

Rejection of claims 1-5 under 35 U.S.C. §102(e) as unpatentable over Myllyla

Claim 1 clearly recites "determining the presence of the user based on changes in the acoustic paths." Myllyla does not disclose detecting the presence of the user rather discloses a system for determining if the mobile telephone is to be used in the hands-free mode (mobile telephone away from the ear of the user) or handset mode (mobile telephone next to the ear of the user). Myllyla clearly describes this type of operation in Column 1, lines 20-31 and Column 3, lines 9-15. Myllyla does not disclose or suggest detecting the presence of the user since Myllyla assumes that the user is present and is only trying to determine the location of the mobile telephone to the user's head.

Applicant respectfully submits that claim 1, is patentable under 35 U.S.C. §102(e) over Myllyla.

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Dependent claims 2-5 are directly or indirectly dependent on claim 1 and are patentable for at least the same reasons as claim 1.

Rejection of claims 9-12 under 35 U.S.C. §102(e) as unpatentable over Myllyla

Applicant respectfully submits that claims 9-12 are patentable under 35 U.S.C. 102(e) over Myllyla for the same reasons as claims 1-5.

Summary

For the foregoing reasons, applicant respectfully request that the present application be allowed, or alternatively, that prosecution on the merits be reopened.

Respectfully,

Julian Orbach

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Date: 02/16/2009

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